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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/002,906	01/05/1998	THEODORE D. WUGOFSKI	P1181US00	8339
32719 7590 10/02/2008 GATEWAY, INC. ATTN: PATENT ATTORNEY 610 GATEWAY DRIVE MAIL DROP Y-04 N. SIOUX CITY, SD 57049				
EXAMINER				
HUYNH, SON P				
ART UNIT		PAPER NUMBER		
2623				
MAIL DATE		DELIVERY MODE		
10/02/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

09/002,906

**Applicant(s)**

WUGOFSKI ET AL.

**Examiner**

SON P. HUYNH

**Art Unit**

2623

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 52-71 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 52-71 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C2)
- Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/2/2008 has been entered.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 52-71 have been considered but are moot in view of the new ground(s) of rejection.

Claims 1-51 have been canceled.

### ***Claim Rejections - 35 USC § 112***

3. Claims 56 and 66 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter

which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 56 and 66 recite the limitation "removing said channel from the favorite list **after the content has aired, the channel being removed without user intervention**" which is not supported by the specification. The specification merely describes adding an item to a favorite list, and removing an item from a favorite list (page 8, lines 12-21).

***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 62-71 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 62-71 recite "a computer readable medium having computer executable instructions stored thereon for execution on a computer..." does not necessarily define structural and functional interrelationships between the computer program and computer components which permit the functionality of the computer program to be realized and is thus not statutory. (see M.P.E.P. 2106.01).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 52-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks et al. (US 6,539,548) in view of Knee et al. (US 5,589,892).

Note: US 5,798,785 (referred to as H785) is continuation of Ser. No. 08/160,282 (Pat. No. 5,659,350; CIP of applications: 07/991,074; 08/160,280 (Pat. No. 5,600,364 – referred to as H364); 08/160,281 (Pat. No. 5,798,785); 08/160,193 (Pat. No. 5,734,853); 08/160,194 (Pat. No. 5,990,927); 08/160,283 (Pat. No. 5,682,195); 08/160,280 (Pat. No. 5,600,364). These applications are incorporated by reference (col. 1, lines 5-30). All the applications incorporated by references in their entireties in Patent No. 6,539,548 are treated as part of the specification of patent No. 6,539,548).

Regarding claim 52, Hendricks discloses a method of managing favorite channels relating to a user specified theme (e.g., favorite channels, most often watched channels) based on a user specified theme (e.g., movies, sports, etc.) – see include, but are not

limited to, figures 32g-32h, 35a; Pat. No. 5,798,785: col. 28, line 64-col. 33, line 65, figures 11a-12b), the method comprising:

receiving inputs from a user specifying a theme (see include, but are not limited to, figures 25b-26; H785: figures 11a, 11d, col. 31, lines 34-62, col. 35, line 50-col. 37, line 42);

Hendricks further discloses storing user profile including favorite theme for use to customize/suggest program (see include, but are not limited to, H785: col. 30, lines 34-65; H364: figures 11-12) and the selected category/genre are used to search for associate channels/content (see include, but are not limited to, H785: col. 30, lines 25-64, col. 33, lines 1-34, col. 35, line 49-col. 36, line 67). Thus, the theme/genre must be saved on a computerized system (e.g., set top terminal or head end) associated with a television receiver in response to receiving the input from the user so that the selected category/genre are used to search for program content/channels.

searching available channels for content matching the theme (e.g., search available channel for content matching selected category/genre - see include, but are not limited to, H785: col. 35, line 48-col. 37, line 43);

detecting a match between the theme and content scheduled to air on a channel from among the available channels (only content on the channels associated with the selected category/genre are listed - see include, but are not limited to, H785: col. 35, line 48-col. 37, line 43).

Hendricks further discloses displaying favorite channels (see include, but are not limited to, col. 33, lines 25-34, figure 12a). Thus, the channel is added into favorite list.

However, Hendricks does not explicitly disclose specifying theme for favorite channels, the channel is added to a favorites list in response to the detection of match for the theme.

Knee discloses receiving input from a user specifying a theme for favorite channels and adding channel to a favorite list in response to detection of a match for the theme (see include, but are not limited to, col. 29, lines 4-47). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hendricks with the teachings as taught by Knee in order to yield predictable results such as to improve efficiency in channels selection/locate desired channel on television screen.

Regarding claim 53, Hendricks in view of Knee discloses the method as discussed in the rejection of claim 52. Hendricks in view of Knee further discloses providing a second favorite list (e.g., most watched channels list) based on usage habits of the user, wherein the computerized system detects matches to be added to the second favorite list by monitoring the usage habits of the user (see include, but are not limited to, H548: figures 25b-25d; H785: figure 12a, col. 35, lines 20-47; col.33, lines 14-34);

wherein the first favorite list is based on the user specified theme and is independent of a number of times the available channel have been viewed (see include, but is not limited to, Knee: col. 29, lines 4-47).

Regarding claim 54, Hendricks in view of Knee discloses the method as discussed in the rejection of claim 52. Hendricks in view of Knee further discloses searching, detecting and adding are conduct automatically without use intervention after the theme is saved on the computerized system (see include, but are not limited to, figures 25a-26, 32g-32h, 35a; H785: col. 28, line 66-col. 30, line 50, figures 11a-12d, col. 32, line 63-col. 37, line 44; Knee: col. 29, lines 4-47).

Regarding claim 55, Hendricks in view of Knee discloses the method as discussed in the rejection of claim 52. Hendricks in view of Knee further discloses the computerized system associated with the television receiver is part of a convergence system configured to receive television signals from at least one of a group of signal provider consisting of satellite television, cable television and terrestrial broadcast television (see include, but are not limited to, H548: figures 1-4).

Regarding claim 56, Hendricks in view of Knee discloses the method as discussed in the rejection of claim 52. Hendricks in view of Knee disclose updating channel in favorite channel list by removing/deleting particular channel without user intervention (see include, but are not limited to, H785: col. 33, lines 15-34; Knee: figures'8, 38). Official Notice is taken that removing a channel from favorite channel after the content aired is well known in the art. For example, removing channel in recording list/favorite list after the content has aired. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hendricks in view of Knee



with the well-known teaching as taught in the art in order to yield predictable results such as to improve efficiency in favorite management, thereby allowing the user to follow channels in the favorite list easily.

Regarding claim 57, Hendricks in view of Knee discloses the method as discussed in the rejection of claim 52. Hendricks in view of Knee further discloses receiving second inputs from user specifying a sub-theme defining theme for the favorite channels (e.g., user selection of another category or sub-category and for displaying only channels associated with the second selected category or selected subcategory - see include, but are not limited to, Knee: figures 49-52).

Regarding claim 58, Hendricks in view of Knee discloses the method as discussed in the rejection of claim 52. Hendricks in view of Knee further discloses the first input and second inputs are selected from a list of content descriptors (content descriptors on television screen - see include, but are not limited to, H548: figures 25b-26, Knee: figures 19, 49-51).

Regarding claim 59, Hendricks in view of Knee discloses the method as discussed in the rejection of claim 52. Hendricks in view of Knee further discloses searching being conducted in an electronic program guide (EPG) database associated with the at least one of a group providers in accordance with an update frequency (see include, but are

not limited to, H785: col. 30, lines 40-64, col. 31, lines 34-57; col. 35, line 48-col. 37, line 42; Knee: figures 1, 47, 49-51, col. 29, lines 6-54).

Regarding claim 60, Hendricks in view of Knee discloses the method as discussed in the rejection of claim 52. Hendricks in view of Knee further discloses the searching is conducted within a predetermined number of timeslots ahead of a current time (see include, but are not limited to, H548: figures 21, 28a-28b, 32a-32d; Knee: figure 25).

Regarding claim 61, Hendricks in view of Knee discloses the method as discussed in the rejection of claim 60. Hendricks in view of Knee further discloses the timeslots are each 30 minutes in length (see include, but are not limited to, Knee: figure 25). Knee further disclose stored scheduled information can be updated on a period basis such as hourly, weekly, or at any time when changes in scheduling or other factors warrant an update (col. 10, lines 22-33). Thus, it would have been obvious to one of ordinary skill in the art to use update frequency is no less than once every 30 minutes in order to reduce displaying obsolete data to the user.

Regarding claims 62-71, the limitations of the computer readable medium correspond to the limitations of the method as claimed in claims 52-61 are analyzed as discussed in the rejections of claims 52-61.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Ohkura et al. (US 6,128,009) discloses program guide controller.

Williams et al. (US 5,945,988) discloses method and apparatus for automatically determining and dynamically updating user preferences in an entertainment system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SON P. HUYNH whose telephone number is (571)272-7295. The examiner can normally be reached on 9:00 - 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher S. Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Son P Huynh/  
Primary Examiner, Art Unit 2623

September 29, 2008